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Connecticut State Medical Society Testimony
In Opposition to Senate Bill 247
An Act Concerning a Cause of Action For Loss of Consortium By A Minor Child With
Respect To The Death Of A Parent
Judiciary Committee
February 29, 2016

Senator Coleman, Representative Tong and members of the Judiciary Committee, on behalf of the physicians and physicians in training of the Connecticut State Medical Society (CSMS) thank you for the opportunity to testify in opposition to **Senate Bill 247 An Act Concerning a Cause of Action For Loss of Consortium By A Minor Child With Respect To The Death Of A Parent**. We opposed this legislation as it is once again a piece meal approach to changes in our tort system that will worsen the medical practice climate in Connecticut. In a state where we struggle to attract and keep physicians, weakening an already frail malpractice system will serve only to drive our best and brightest physicians out of Connecticut to states where liability protections are greater and such protections are reflected in lower malpractice premiums.

Those that support this legislation will no doubt indicate that passage of this bill will simply codify the Connecticut Supreme Court's recent decision in *Campos vs. Coleman*. In fact, the summary language to the legislation indicates that this legislation is "consistent with the Connecticut Supreme Court's decision in *Campos v. Coleman*."

While the *Campos* decision did recognize a claim of loss of consortium by a minor child, the Court did in fact place certain restrictions on the ability to bring suit and the right of recovery. The Court noted that the consortium claims may only be raised on behalf of a child who was a minor at the time of the injury in question and must be attached to the injured parent's claim for recovery. Damages are limited as well to the time between the parent's injury and either the date that the child reaches majority or the date of the parent's death, whichever occurs first. The proposed language in SB 247 seems broader than the *Campos* decision and does not appear to impose the restrictions stated in *Campos*. In addition, the *Campos* decision was not a unanimous decision and several of the Connecticut Supreme Court justices disagreed with the ruling and the approach taken by the majority in issuing the ruling. There has also been a lot of discussion in the legal community as to whether the Court's stated rationale for extending the loss of consortium claims was appropriate. Given these issues, we do not feel that it is prudent at this time to codify into legislation the approach taken by the *Campos* court. The court system is the better place to litigate and decide the facts and circumstances of each individual case.

That said, we are physicians, not attorneys. As physicians, our primary focus is on our patients and the quality care we provide to our patients. The Connecticut practice environment is a

difficult one. The independent community physician is becoming a thing of the past, and the unfriendly practice environment in Connecticut, including the liability climate, is unfortunately a primary factor in the downfall of the independent physician. The piece meal approach to liability issues only further hurts the liability climate in Connecticut, driving up malpractice insurance premiums and causing the exodus of physicians from this state.

Many of you know and understand the ongoing struggle of physicians to obtain and afford medical liability insurance. Currently, limited protections exist for physicians within our state tort statutes making premium rates for physicians in Connecticut among the highest in the nation. This has been an ongoing issue for physicians and the passage of this legislation will only exacerbate the situation.

Over a decade ago CSMS brought forth concerns regarding the availability and affordability of medical liability insurance to this body. Subsequently, the General Assembly passed Public Act 05-275 An Act Concerning Medical Malpractice, to make statutory changes regarding insurance department oversight and physician oversight. Public Act 05-275 was largely based on the recommendations of a 2003 the Program Review and Investigations Committee (PRI) study of medical liability insurance rates in Connecticut. This comprehensive review of the entire liability system included (1) a market overview, (2) medical malpractice claims, (3) insurance pricing, (4) insurance department oversight, (5) physician oversight, and (6) data analysis. Significant recommendations we made by the PRI committee for each category.

Due to the significant, timely, and comprehensive work of the PRI staff, many recommendations ultimately were included to some degree in Public Act 05-275 An Act Concerning Medical Malpractice. However, while significant statutory changes were made regarding insurance department oversight and physician oversight, only two of the six recommendations related to medical malpractice claims were enacted in some form; amendments to statutes related to the Offer of Judgment and the Good Faith Certificate.

Following passage of PA 05-275, several factors, few, but not many, related to the legislation, led to a slowing in increases of medical liability premiums for physicians. However, Connecticut remains a state among those with the highest average premiums, total indemnity payments and average indemnity payments. In addition, PA 05-275 has not led to any significant change in the total number of closed claims and total indemnity payments. Reports required by PA 05-275 from the State of Connecticut Insurance Department (CID) demonstrate that with some fluctuation, both upward and downward, closed claims, total indemnity payments and average indemnity payments have not been altered significantly by the contents of the public act. In addition, between 2010 and 2014 nearly 60% of closed claims took between two and seven and one half years to resolve. A 2013 study in the publication *Health Affairs* reported that physicians spend on average nearly 11% (50.7 months) of a forty year career with an open, unresolved medical liability claim.

PA 05-275 has not had a positive impact on the tort system. Issues of efficiency and cost effectiveness have not been addressed as further demonstrated by CID reported statistics showing that fewer than 1400 claims provided a payout of nearly \$800 million during the period of 2010 and 2014. Furthermore, it is still estimated that an overwhelming majority of patients who suffer adverse outcomes never gain access to the tort system, mostly due to the lack of severity of the injury. Passing Senate Bill 247 is not the answer to fixing our broken tort system.

We must point out that one recommendation of the PRI 2003 report went largely ignored by the legislature in its debate on Medical Liability Reform. It was a non-complex, low cost recommendation that could have yielded a beneficial outcome: "A multi-stakeholder taskforce shall be appointed to determine the feasibility of developing systemic alternatives to the current tort system." We find this approach to be more appropriate than continually defending a piecemeal approach to picking away at the tort system.

We fully believe that both physicians and the patients they serve can benefit from the development of an innovative system more appropriate, less contentious, and more cost efficient than the current tort system. The fact that the reforms of PA 05-275 have provided no significant relief for physicians, nor provided any efficiency or effectiveness of the tort system, coupled with the fact that there are significant and rapidly growing examples of innovated reform, demonstrate that Connecticut would benefit from the investigation of these issues.

We respectfully request you to take no action on SB 247 at this time and work with physicians and other stakeholders to develop innovative reforms including Health Courts, Liability safe harbors for the practice of Evidence Based Medicine (EBM), alternative dispute resolution mechanisms, early offer and compensation programs and any other viable approach, rather than codifying a court decision on which there was dissention amongst the judges and differing opinions exist within the legal community.